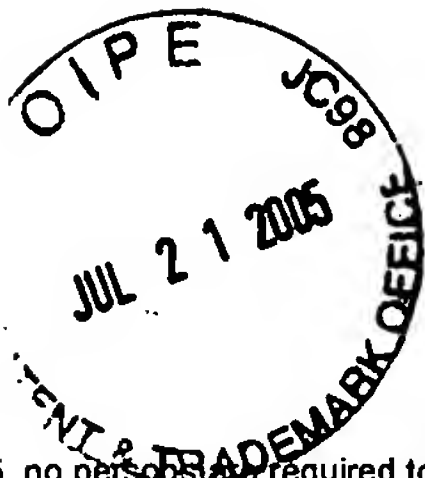


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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

040675-0407

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Application Number

10/707,238

Filed

11/30/2003

First Named Inventor

James G. STANLEY

Art Unit

2858

Examiner

Vincent Nguyen

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 39,370

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature

Howard N. Shipley

Typed or printed name

202-672-5582

Telephone number

July 21, 2005

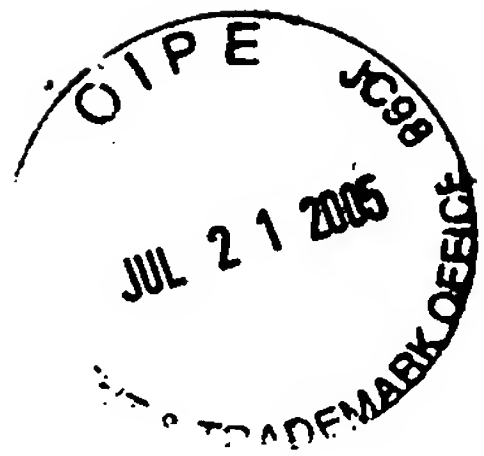
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Atty. Dkt. No. 040675-0407

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James G. STANLEY, et al.
Title: OCCUPANT SENSOR
Appl. No.: 10/707,238
Filing Date: 11/30/2003
Examiner: Vincent Q. Nguyen
Art Unit: 2858

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the New Pre-Appeal Brief Conference Pilot Program,
announced July 11, 2005, this Pre-Appeal Brief Request is being filed together with a Notice
of Appeal.

REMARKS

The rejection of Claims 1-19 as unpatentable under 35 U.S.C. § 102(b) over U.S. Patent 5,525,843 ("Höwing et al.") is presented for review.

"A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (M.P.E.P. § 2131). In the Examiner interview conducted July 12, 2005, the Examiner took the position that "although Höwing et al. does not explicitly disclose [the electrode and heating element arrangement as recited in the claims] the second electrode is implemented with heating element 14." (See Interview Summary, July 12, 2005)(emphasis added). The Examiner contends that Höwing et al. inherently discloses the arrangement called for in claims 1, 7, and 13. The rejection should be withdrawn because Höwing et al. does not disclose, teach or suggest each and every element of independent claims 1, 7 and 13, either explicitly or inherently.

For example, Höwing et al. fails to teach a method for providing for sensing an occupant in a seat, wherein the seat incorporates a seat heater comprising "placing a heating element in the seat, placing a first electrode between said heating element and a seating region" and "placing a second electrode between said heating element and said first electrode" as claimed in amended claims 1 and 7. Further, Höwing et al. does not disclose an apparatus having "a heating element positioned in said seat, a first electrode located between said heating element" and "a second electrode located between said heating element and said first electrode" as claimed in amended claim 13.

Instead, Höwing et al. only discloses "a first electrode 14 which may or may not constitute a heating element" and "a second electrode 15." (See Col. 4, lines 26-31; Figs. 3-4). Höwing et al. does not disclose a distinct first electrode positioned between a heating element and a seating element, nor does Höwing et al. teach or suggest a second electrode positioned between the first electrode and the distinct heating element.

In contrast, as shown in Figure 2 of the application, the present invention comprises a first electrode 40 positioned between a heating element 34 and a seating region 20. Further, the present invention recites a second electrode 82 positioned between the first electrode 40 and said heating element 34. Höwing et al. clearly does not disclose two electrodes positioned between a heating element and a seating region. Thus, the inventions of claims 1, 7 and 13 as amended are not disclosed and the rejection should be withdrawn.

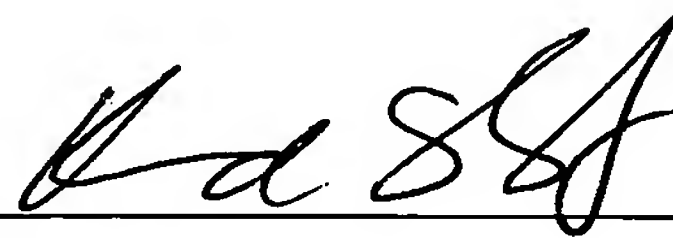
Each of claims 2-6, 8-12 and 14-19 depend from either claims 1, 7 or 13 and are therefore patentable for at least the reasons set forth above. These patentable limitations include, for example, an occupant seat "wherein said second electrode comprises a sheath at least partially around at least a portion of said heating element," as claimed in claims 3, 9 and 15. The sheath is denoted by reference numerals 82 and 82' in Fig. 2. In contrast, Höwing et al. does not teach, suggest or disclose an occupant sensor "wherein said second electrode comprises a sheath at least partially around at least a portion of said heating element" as claimed in claims 3, 9 and 15. Thus, reconsideration and withdrawal of the rejections of claims 2-6, 8-12 and 14-19 is respectfully requested.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance.

Respectfully submitted,

Date July 21, 2005

By



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